IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

FAO No. 102 of 2003.

Judgement reserved on: 3.5.2007

Date of decision: 11.6.2007.

National Insurance Company Ltd. ….. Appellant.

Vs.

Smt. Jugni Devi & ors. …. Respondents.

Coram

The Hon'ble Mr. Justice Kuldip Singh, Judge.

Whether approved for reporting?[1]

For the Appellant : Mr. Ashwani K. Sharma, Advocate.

For the Respondents : Mr. Sanjay Dutt Vasudeva, Advocate, for respondents No. 1 and 2.

Mr. Ashwani Pathak, Advocate, for respondent No.3.

Mr. Rakesh Sharma, Advocate, for respondent No.5.

Kuldip Singh, Judge.

The National Insurance Company is in appeal against the award, dated 11.10.2002, passed by learned Motor Accident Claims Tribunal (I), Kangra at Dharamshala, in MACP No. 41-D/99, awarding Rs.1,85,000/- compensation to the petitioners Smt. Jugni Devi and Nurdh Singh, which is to be paid by all the respondents jointly and severally alongwith interest at the rate of 9% per annum, from the date of the petition till the date of the payment, the insurer

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[1] ***Whether the reporters of the local papers may be allowed to see the Judgment?***

has been ordered to pay the compensation amount. The amount awarded is inclusive of amount payable, under Section 140 of Motor Vehicles Act, 1988 (for short, the Act). The parties are referred in the same manner as in the impugned award.

2. The facts in brief are that petitioners Smt. Jugni Devi and Nurdh Singh filed claim petition, under Section 166 of the Act, claiming Rs. 7,00,000/- compensation on account of death of their son Mohinder Singh, in an accident, involving jeep No. HP-39-9783 on 11.4.1999, owned by respondent No.2 Rajesh Kumar and being driven by respondent No.1 Kuljeet Singh and respondent 1-A Khem Raj, at the time of accident. The jeep was insured with National Insurance Company Limited.

3. The further case of the petitioner is that on 11.4.1999, their son Mohinder Singh had gone with herds of goats and sheep at Tiara, Tehsil & District Kangra. He had come to meet them and on the way on the same day after meeting them at 5.15 p.m. while the deceased was going on foot on the left side of the road towards Gaggal side and reached near IPH Store, the jeep No. HP-39-9783 came from behind and struck against him. In the accident he received multiple injuries and died on the spot. The jeep was being driven rashly and negligently by the driver of the jeep. The petition was amended, vide order dated 25.8.2000 and Khem Raj, was impleaded as respondent No.1-A. Respondent No.1-A, in his separate reply has stated that at the time of the accident, he was not driving the jeep. The respondent No.3 by way of separate reply denied the accident and the entitlement of the petitioners for

compensation. It was pleaded that respondent No.1-A, was driving the jeep at the time of the accident and he was not holding a valid and effective driving licence. The vehicle was not insured. The petition has been filed in collusion with respondents No. 1 and 2. The vehicle was not authorized to carry the passengers. The respondent No.3, thus denied the claim of the petitioners for compensation. The Tribunal framed the following issues:-

1. Whether the deceased Mohinder Singh had died on account of rash/ negligent driving of the jeep by respondent No.1? OPP.

2. If issue No.1 is proved in affirmative, what amount of compensation the petitioners are entitled to and from whom? OPP.

3. Whether respondent No. 1-A Khem Raj was driving the jeep at the relevant time? OPR-3.

4. Whether the jeep was being driven in contravention of terms and conditions of the policy? OPR-3.

5. Whether the petition is not maintainable? OPR.

6. Relief.

4. The Tribunal in issue No. 1, has held that Mohinder Singh has died in an accident involving jeep No. HP-39-9783, which was being driven rashly and negligently by respondent No.1. In issue No.2, the Tribunal has held that petitioners are entitled to compensation, as noticed above. The issue No.3 has been decided by holding that Khem Raj was not driving the vehicle at the time of

accident and that vehicle was not being driven in contravention of the terms and conditions of the insurance policy. The issue No. 5 of maintainability was not pressed by the respondents.

5. I have heard the learned counsel for the parties and have also gone through the record.

6. The learned counsel for the insurer has submitted that Khem Raj was driving the offending vehicle at the time of the accident. He was not holding a valid and effective driving licence at the time of the accident. The insurer is not liable to pay the compensation amount. The learned counsel for respondents No. 1 and 2 has supported the impugned award.

7. PW 1 Smt. Jugni Devi, has deposed that her son Mohinder Singh on 11.4.1999 had come to meet them at their house and while going back on the same day near Bhated, jeep No. HP-39-9783 struck him and he died on the spot. The accident had taken place due to the rash and negligent driving of the driver. The deceased was shepherd and was having 400 goats and sheep. He used to give Rs. 7000/- to Rs. 8,000/- to her. He used to look after her and her husband. The deceased was about 22 years of age at the time of accident. He was bachelor. PW 4 Kuldip Kumar, has proved Ex. PW 4/A FIR No. 98/99, dated 11.4.1999, registered under Sections 279, 337, 304-A, IPC.

8. RW-1 Kuljeet Singh, has deposed that he was driver on jeep No. HP-39-9783 and was having effective driving licence Ex. R-1. On 11.4.1999, he was driving the jeep. He denied that

accident had taken place due to his negligence. He has proved insurance cover note Ex. R-2 of the jeep.

9. RW 1 Chain Lal, ASI, Police Station, Baijnath has placed on record statement Ex. RW2/A of Gopal Singh, recorded by him during the investigation of the case. Similarly, he placed on record statement Ex. RW2/B of Om Parkash. He has stated that in his investigation, it has come that Khem Raj was driving the jeep. In cross-examination, he has deposed that the owner of the jeep has stated that the driver of the vehicle was Kuljeet Singh. The papers of the vehicle were taken into possession and the driving licence of Kuljeet Singh.

10. The point involved in the appeal is very short to the effect whether in view of insurance policy Ex. R-2, the insurer is liable to pay the compensation. The insurer has limited defences available to it. In order to escape the liability, the insurer will have to prove the violation of terms and conditions of the policy. RW 1 Kuljeet Singh has specifically stated that on 11.4.1999, he was driving the vehicle. The vehicle was insured with the insurance company, rather insurance of the jeep with the insurance company has not been denied. The deceased was walking on the road when he was struck by the jeep and he died on the spot in the accident. RW-1 the driver of the jeep has proved valid and effective driving licence. The insurance company has failed to prove that at the time of the accident Khem Raj was driving the jeep. The insurance company has miserably failed to make out a case for violation of terms and conditions of the insurance policy Ex. R-2. The deceased was not a

passenger in the jeep. Thus taking from any angle, the insurance company cannot escape its liability to pay the compensation. The findings recorded by the learned Tribunal qua liability of the insurance company to pay the compensation, are upheld.

11. No other point was urged.

12. In view of above discussion, the appeal is dismissed with no orders as to costs..

June 11, 2007. **(Kuldip Singh)**
(*Hem*) **Judge.**